

**DRAFT DOCUMENT—FOR DISCUSSION ONLY**

Notice  
of Rulemaking Hearing  
Tennessee Ethics Commission  
Chapter 0580-1-4

Rules Pertaining to Administrative Sanctions **for failure to file required documents**

The Tennessee Ethics Commission will hold a public hearing to receive comments concerning new rules, pursuant to T.C.A. § 3-6-107(1). This hearing will be conducted as prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-201 et seq., and will take place in the State Library and Archives Building, Capitol Blvd., Nashville, Tennessee, at \_\_\_\_ a.m. CDT on \_\_\_\_\_, 2008.

Written comments will be considered if received by close of business, \_\_\_\_\_, 2008, at the office of the Tennessee Ethics Commission, 201 4<sup>th</sup> Ave. N, Suite 1820, Nashville, TN 37248; 615-253-8634.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Ethics Commission, 201 4<sup>th</sup> Ave. N, Suite 1820, Nashville, TN 37248, 615-253-8634, to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, by telephone, or other means, and should be made no less than ten (10) days prior to \_\_\_\_\_, 2008 or the date such party intends to review such filings, to allow time to provide such aid or service. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Complete copies of the text of the notice may be downloaded from the web at <http://state.tn.us/sos/tec/index.htm>, or may be obtained by contacting David M. Himmelreich, General Counsel, Tennessee Ethics Commission, 615-253-2665, 201 4<sup>th</sup> Ave. N, Suite 1820, Nashville, TN 37248.

Substance of Proposed Rules  
of  
The Tennessee Ethics Commission

Chapter 0580-1-4

New Rules

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**0580-1-4-.01 PURPOSE AND SCOPE.**

- (1) Purpose. These rules are promulgated for the purpose of providing procedures for the assessment of administrative sanctions under T.C.A. §§ 3-6-105 through 3-6-107; 3-6-205, 3-6-208 and 3-6-209; and 3-6-306 and 3-6-308(10), for late filing of, or failure to file, documents required by T.C.A. § 2-10-128, 8-50-501, *et seq.*, 3-6-302 and 3-6-303.
- (2) Scope. These rules do not encompass contested case hearing procedures which are set forth elsewhere.

**Authority:** T.C.A. §§ 2-10-128; 3-6-105 through 3-6-107; 3-6-205 through 3-6-206; 3-6-301 through 3-6-308; 8-50-501 through 8-50-506.

**0580-1-4-.02 DEFINITIONS.**

- (1) The "Act." The Comprehensive Governmental Ethics Reform Act, Tennessee Public Acts (1<sup>st</sup> Extraordinary Session), chapter 1, and all amendments thereto.
- (2) Commission. The Tennessee Ethics Commission.
- (4) Executive Director. The Executive Director of the Tennessee Ethics Commission.
- (5) General Counsel. The General Counsel of the Tennessee Ethics Commission.
- (6) Petitioner. \_\_\_\_\_-

**Authority:** T.C.A. §§ 3-6-107; 3-6-306(a)(3)(B).

**0580-1-4-.03 NOTICE OF VIOLATION AND OPPORTUNITY TO RESPOND.**

- (1) When it appears to the Executive Director or General Counsel of the Commission that any person who is required under the Act, or rules promulgated pursuant thereto, to file a registration, report, disclosure, or other document appears to have failed timely to do so, the Executive Director or designee shall have personally served upon such person, or send to such person by United States mail, return receipt requested, a written notice of violation.
- (2) Content of notice. The notice of violation required by subsection (1) shall specify
  - a. the statutory or administrative provision containing the requirement that has allegedly been violated,
  - b. the factual basis for the violation,
  - c. the amount of any proposed civil penalty,
  - d. the maximum amount of civil penalties or other sanctions that could be assessed for such a violation, and
  - e. the date by which the violation can be cured by a late filing, if applicable, and the date a response or petition must be filed;

provided, however, that in the case of violations specified in Section 3-6-205, Tennessee Code Annotated, the notice shall in addition conform to such additional requirements as are set forth in that section.

- (3) Response to notice. Any person who receives a notice of violation pursuant to subsection (1) of this rule may within **fifteen (15)** days of receipt file a response with the Commission seeking a waiver or reduction of the proposed penalty, or showing why such civil penalty or other sanction should not be imposed.

#### **0580-1-4-.04 RECOMMENDED DISPOSITION OF ALLEGED VIOLATION.**

- (1) Within **fifteen (15)** days of receipt of a response under this rule, or, if no timely response is filed, within twenty (20) days of the issuance of the notice of violation, the Executive Director or designee shall issue a written recommendation to the Commission on whether a violation should be found, and, if so, what civil penalty or other sanction, if any, should be imposed.
- (2) In formulating any recommendation that a civil penalty be imposed, the Executive Director or designee may consider any factor deemed relevant to the particular case, including but not limited to the following:
  - a. Whether the amount imposed will be a substantial economic deterrent to the violator.
  - b. Whether the violator has previously committed violations.
  - c.** The circumstances leading to the violation.
  - d. The severity of the violation and the risk of harm to the integrity of the processes of government.
  - e. The economic benefits gained by the violator as a result of non-compliance.
  - f. The public interest.
- (3) Notice of recommended disposition. The Executive Director or designee shall cause to be personally served upon the alleged violator, or to be sent to such person by United States mail, return receipt requested, a notice of the recommended disposition.
  - a. If the recommended disposition is that no violation occurred and no sanction should be recommended to the Commission, then the notice shall so inform the alleged violator.
  - b. If the recommended disposition includes a finding of a violation, then the notice must specify:
    - i. What requirement, if any, appears to have been violated,
    - ii. Whether a sanction is recommended to the Commission, and if so a description of the sanction,
    - iii. The date, time and location of the meeting in which the Commission will consider the imposition of such sanction,
    - iv. That the alleged violator has the right to attend the Commission meeting.
  - c. If the recommended disposition includes imposition of a civil penalty by the Commission, the notice must also specify:
    - i. The amount of the civil penalty that the Executive Director or designee

- recommends,
- ii. That the alleged violator has the right to a contested case hearing before the Commission to seek a waiver or reduction of the penalty, or to otherwise contest the penalty,
- iii. That the alleged violator can exercise the right to a contested case hearing only by filing a petition for a contested case hearing before the Commission within thirty (30) days from receipt of the notice,
- iv. That if the alleged violator does not timely file a petition that complies with the requirements set forth by law and in this rule, the right to a hearing before the Commission will be waived.
- v. The place where a petition for hearing must be filed, and
- vi. The matters that must be set forth within such a petition.

#### **0580-1-4-.05 PETITION FOR HEARING ON CIVIL PENALTY**

- (1) Filing of petition.
  - a. If an alleged violator wish to request a waiver or reduction of, or in any way to contest, a proposed civil penalty under this rule, the alleged violator shall within thirty (30) days after the receipt of a notice of recommended disposition, file a petition with the Commission.
  - b. The alleged violator may file the petition by hand delivery, by first class mail, by certified mail, or by facsimile transmission. It is the alleged violator's obligation to ensure timely receipt of the petition by the Commission. The risk of non-delivery shall be on the alleged violator.
  - a. If the alleged violator wishes to receive a file-stamped copy of the petition as proof of timely filing, the violator may file a second copy of the petition and exhibits and, if the petition was filed other than by hand delivery, a self-addressed, stamped envelope with sufficient postage prepaid to ensure mailing to the petitioner.
- (2) Contents and form of petition.
  - a. The first paragraph of the petition shall state whether the petitioner, if an individual, wishes to appear in person at the Commission meeting at which the Commission will consider the petition. If petitioner is a person other than an individual, the first paragraph of the petition shall state whether the petitioner wishes to appear through a member, officer, or other authorized representative, or through counsel. If the petition contains such a request, petitioner will be afforded a contested case hearing. If the petition does not contain a request to appear in person, the Commission will only consider the written petition and any exhibits thereto.
  - b. Grounds. The petition shall clearly and concisely set forth petitioner's grounds for contending that the penalty should be waived or reduced, or otherwise modified in any way. Factual allegations made on information and belief, rather than petitioner's personal knowledge, shall set forth the grounds upon which such information and belief are based.
  - c. The petition shall be signed under oath before a notary public or other official

authorized to take oaths, and shall specify that the factual allegations are made upon personal knowledge of the petitioner; provided, that if any of the allegations in the petition are known to petitioner only by information and belief, rather than by personal knowledge, the oath shall specify each allegation made only on information and belief.

- (4) Within a reasonable time after a timely filing of a petition in compliance with these rules, the Executive Director or designee shall send the petitioner written advance notice of the meeting at which the Commission will consider the petition.

*Authority:* \_\_\_\_\_

Legal contact and/or party who will approve final copy for publication:

Bruce A. Androphy, Executive Director  
Tennessee Ethics Commission  
201 4<sup>th</sup> Ave N, Suite 1820  
Nashville, TN 37219  
(615) 253-8634

Contact for disk acquisition:

David M. Himmelreich, General Counsel  
Tennessee Ethics Commission  
201 4<sup>th</sup> Ave N, Suite 1820  
Nashville, TN 37219  
(615) 253-8634

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

\_\_\_\_\_  
David M. Himmelreich, General Counsel

The roll-call vote by the Tennessee Ethics Commission on these rulemaking hearing rules was as follows:

	Aye	No	Absent
Thomas J. Garland (Chairman)	_____	_____	_____
R. Larry Brown	_____	_____	_____
Donald J. Hall	_____	_____	_____
Linda W. Knight	_____	_____	_____
Dianne Neal	_____	_____	_____
Benjamin S. Purser, Jr.	_____	_____	_____

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Ethics Commission on the \_\_\_\_ day of \_\_\_\_\_, 2008.

Further, I certify that the provisions of T.C.A. §4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on the \_\_\_\_\_, 2008 and such notice of rulemaking hearing having been published in the \_\_\_\_\_, 2008\_ issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the \_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Bruce A. Androphy, Executive Director

Subscribed and sworn to before me this the \_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Notary Public

My commission expires on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

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Robert E. Cooper, Jr.

Attorney General & Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of state on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and will become effective on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Riley C. Darnell  
Secretary of State

By:\_\_\_\_\_